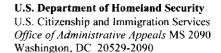
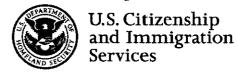
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FILE:

Office: TEXAS SERVICE CENTER Date:

DEC 1 5 2010

IN RE:

Petitioner:

Beneficiary:

Beneficiary.

PETITION:

Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced

Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration

and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a research scientist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we withdraw any inference that the petitioner must demonstrate "extraordinary ability" for the benefit sought. We also withdraw the director's concern that the proposed benefits of the beneficiary's research would not be national in scope. Nevertheless, we uphold the director's ultimate conclusion that the petitioner has not demonstrated why a waiver of the alien employment certification process would be in the national interest.

Section 203(b) of the Act states in pertinent part that:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
 - (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
 - (B) Waiver of job offer.
 - (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Immunology from the Tokyo Women's Medical University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is

whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, immunology. The director then concluded that the petitioner had not established that the proposed benefits of his research would extend beyond his employer. The proposed benefits of the petitioner's research include enhancement of immune therapy of cancer and a decrease of organ transplant rejections. We are satisfied that these proposed benefits would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner submitted evidence of his membership in the American Association of Immunologists. the membership coordinator, asserts that regular membership requires possession of a medical or doctoral degree, being "an established scientist with substantial achievement in a related discipline," and/or being an author of one article in immunology in a reputable peer-reviewed English language journal. does not specify whether a member must meet all of these requirements. Professional memberships are merely one of the categories of evidence that can be used to demonstrate exceptional ability, a classification that normally requires an approved alien employment certification. Section 203(b)(2) of the Act; 8 C.F.R. § 204.5(k)(3)(ii)(E). The petitioner also submitted evidence that the China Association of Science and Technology issued the beneficiary a dissertation award. While the petitioner did not submit a complete certified translation of the accompanying material about this award as required under 8 C.F.R. § 103.3, it appears from the foreign language document and partial translation that the association issued several of these awards. Once again, recognition for achievements and significant contributions are another category of evidence that can be used to establish eligibility as an alien of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(F).

Meeting two of the criteria for exceptional ability, or even the requisite three criteria for that classification, is not determinative of the matter before the AAO. By statute, "exceptional ability" is not, by itself, sufficient cause for a national interest waiver. NYSDOT, 22 I&N Dec. at 218. Thus,

According to the association's website, http://aai.org/membership/regular.htm (accessed December 2, 2010 and incorporated into the record of proceeding), the associate requires a medical or doctoral degree and authorship of one publication. These requirements can be waived under exceptional circumstances if the candidate shows a substantial research accomplishment. As the petitioner has a medical and doctoral degree and has authored more than one article, it is clear that the petitioner's membership did not depend on demonstrating a substantial research accomplishment.

the *benefit* which the alien presents to his field of endeavor must greatly exceed the "achievements and significant contributions" contemplated for that classification. *Id*; see also id. at 222.

The petitioner also submitted evidence that he was invited to review 14 programs for the Chinese National Natural Sciences Foundation Committee. The record does not confirm that he actually performed this review. On appeal, the petitioner submitted evidence that the committee employs "experts that have a fairly high academic level and good professional ethics in the same field to evaluate the applications for funded projects." While the request may be indicative of the committee's recognition of the petitioner's academic credentials and professional ethics, the request does not establish that the petitioner has already influenced the field as a whole.

The record confirms that the petitioner was the program head of a research project funded by the Chinese National Natural Sciences Foundation Committee. The vast majority of research, if not all research, receives funding from some source. We are not persuaded that every researcher who has worked with a government grant inherently serves the national interest to an extent that justifies a waiver of the alien employment certification requirement.

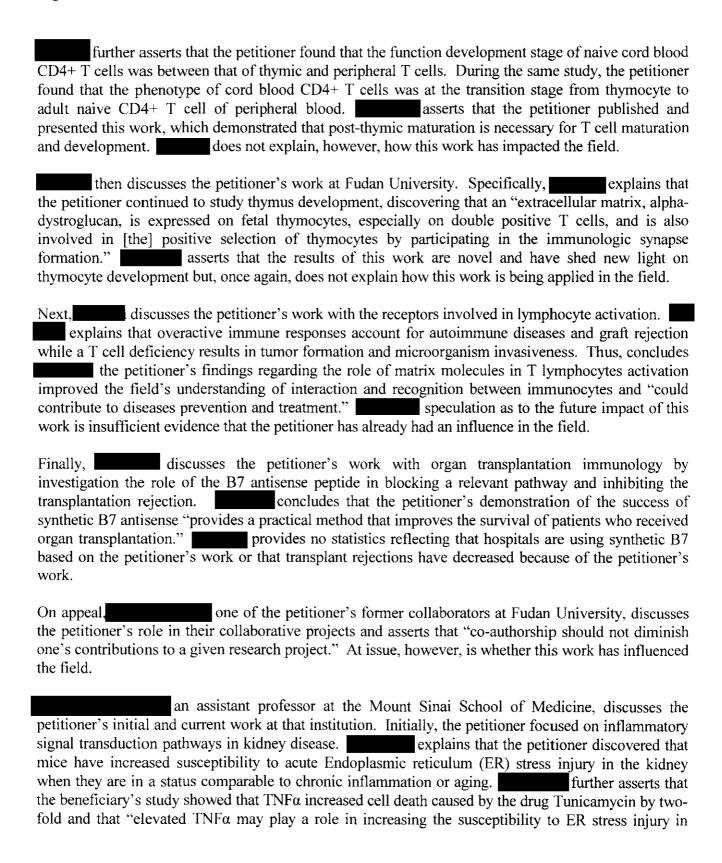
The petitioner submitted copies of 26 articles he has authored and several presentations. While this evidence reflects that the petitioner is a prolific author, at issue is his influence in the field. The director and counsel both addressed the number of citations of the petitioner's work in the aggregate. Given the number of articles the petitioner has authored, however, it is much more instructive to look at the number of citations individual articles have garnered. Most of the petitioner's articles have garnered only a handful of citations. Two of the petitioner's articles have garnered moderate citations. A review of the articles that cite the petitioner's moderately cited

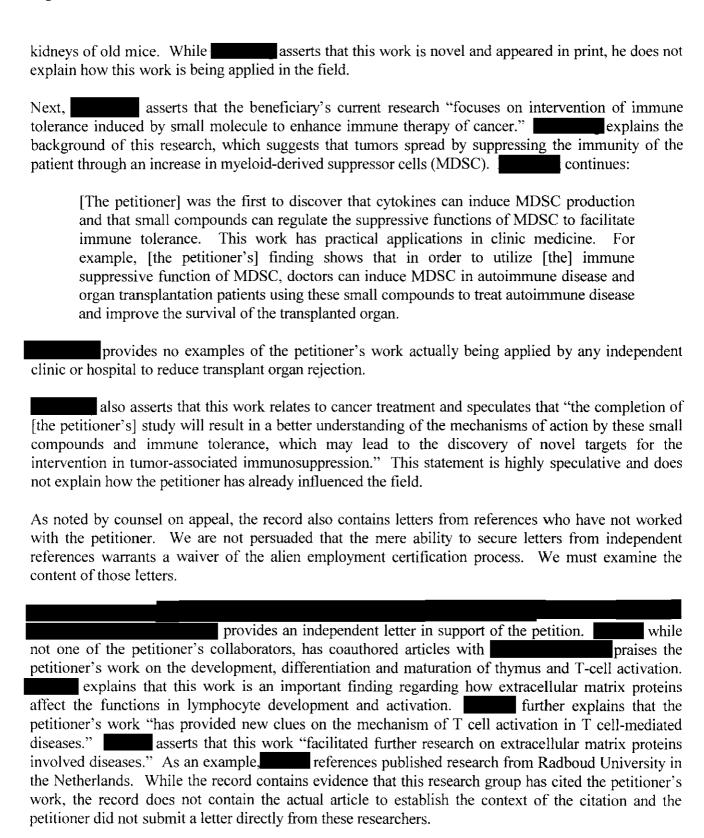
however, reveals that three of the citing articles have garnered 84, 96 and 137 citations each. Thus, it is clear that the petitioner works in a field that can generate large numbers of citations.

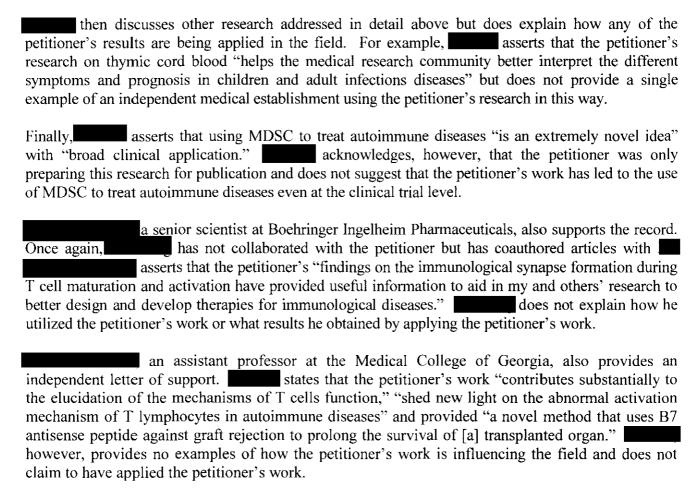
Finally, the petitioner submitted reference letters in support of the petition. a professor at Fudan University, indicates that he supervised the petitioner's research at that institution. first discusses the petitioner's doctoral research at the Tokyo Women's Medical University. Specifically, asserts:

[The petitioner] discovered that the large parts of T cell populations in mice can recognize the bacterial Superantigen, Staphylococcal Enterotoxin A (SEA), in vivo stimulation, and that SEA-reactive distinct T cells' expansion depends on the T cell receptor $V\beta$ chain.

While asserts that this discovery is important to the treatment of patients with Staphylococcal infection in clinic therapy, he does not identify any independent clinic or hospital that has changed its treatment strategy for this infection based on the petitioner's work.







While the petitioner's research is no doubt of value and may have practical applications, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or other research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. None of the references explain how the petitioner's work is being used in the field by independent researchers or at independent medical facilities in practice or through clinical trials.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." See, e.g., Matter of S-A-, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial

evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 l&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See Matter of Caron International, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. Id. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. See id. at 795; see also Matter of V-K-, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. Id. at 795; see also Matter of Soffici, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions that the petitioner has performed important research without providing specific examples of how those innovations have influenced the field. Merely repeating the language of the legal standard for the benefit sought does not satisfy the petitioner's burden of proof.² The petitioner's independent letters do not explain how the authors have applied the petitioner's work. The petitioner also failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

² Fedin Bros. Co., Ltd. v. Sava, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), affd, 905 F. 2d 41 (2d. Cir. 1990); Avyr Associates, Inc. v. Meissner, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. 1756, Inc. v. The Attorney General of the United States, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

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This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.